

### REMARKS

This is responsive to an Office Action mailed on March 11, 2009. The Office Action rejected claims 1-52 and withdrew claims 53-63. Applicant has amended claims 12 and 23. The Office Action currently includes claims 1-52.

The Office Action rejected claims 1-22 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement and as being indefinite. The Office Action states that independent claims 1 and 12 contain the terms “modality dependent attributes” and “modality dependent controls,” which are new matter because Applicant’s specification as originally filed does not provide an adequate written description such as a way to reasonably convey that the inventors have possession of the concept of modality dependents.

Applicant has amended claim 12 to adopt language similar to that found in claim 23 which has overcome the 35 U.S.C. § 112, first and second paragraph, rejections. However, Applicant submits that the claim language “modality dependent attributes” and “modality definite controls” in claim 1 complies with the written description requirement.

The inquiry into whether the description requirement is met must be determined on a case-by-case basis and is a question of fact. *In re Wertheim*, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976). A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant’s disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97.

Applicant respectfully submits that the terms “modality dependent” are not new matter in that the controls are utilized to control a specific modality such as voice recognition. Clearly, a text box is not compatible with a wave file of voice in response to a text box. Therefore, Applicant submits that modality dependent attributes and modality dependent controls

are disclosed as Applicant has disclosed that there are controls for visual markups or inputs, recognition and audible prompting. Applicant submits that separate modality controls are disclosed as one control would not work with a different modality.

Further, the fact that “modality dependent” is not set forth in the specification is not the test for whether the claimed subject matter is new matter. The subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement. MPEP § 2163.02. Under 35 USC § 112, first paragraph, a claim term that is not used or defined in the specification is not indefinite if the meaning of the claim term is discernible. See *Bancorp Services, L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1372, 69 USPQ2d 1996, 1999-2000 (Fed. Cir. 2004) (holding that the disputed claim term “surrender value protected investment credits” which was not defined or used in the specification was discernible and hence not indefinite because “the components of the term have well recognized meanings, which allow the reader to infer the meaning of the entire phrase with reasonable confidence”). Therefore, the fact that a claim term such as “modality dependent” is not found in the specification does not render the claim term as new matter.

As such, Applicant respectfully submits that claims 1 and 12 do not contain new matter. Applicant respectfully requests that the rejections of claims 1-22 under 35 U.S.C. § 112, first paragraph, be withdrawn.

The Office Action also rejected claims 1-22 under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Office Action states that “directly related” is vague and may be misdescriptive.

Applicant respectfully submits that the term “directly related” is in compliance with 35 U.S.C. § 112, second paragraph. Applicant respectfully submits that “directly related” does not give rise to indefiniteness. The invention as recited by the claims includes controls that are used by an application author to cite and specify an application that would generate client side markup executable on a client device. The attributes of the controls allow the author to specify the text that will be prompted to the user. The prompt to the user is application specific.

As such, Applicant respectfully submits that based upon the description and the figures provided in the present application, that claims 1-22 comply with 35 U.S.C. § 112, second paragraph.

The Office Action rejected independent claim 1 as being unpatentable over the Dantzig patent in view of the Coffman patent. Applicant respectfully traverses the obviousness rejection of claim 1.

Claims 1 recites instructions having a set of controls that are defined on an authoring page for a website and processed by a module to create client side markup for use by a client in a client/server system. Claim 1 recites a set of controls defining an authoring page for defining desired visual renderings and at least one of recognition and audible prompting ... each control having a first set of attributes directly related to visual renderings on the client device. The second set of controls have attributes directly related at least one of recognition and audible prompting. Claim 1 also recites a module that generates, using modality dependent attributes provided directly from the controls, client side markup for use by a client browser in a client/server arrangement. Thus, the authoring page creates and/or includes controls that have information related to the desired rendering and are modality dependent.

By contrast, the Dantzig reference teaches IML input files that, as the Applicants have pointed out previously, are modality independent. The Office Action argues that Dantzig generates modality dependent markup *at some point*. However, the independent claims recited in the present application indicate that modality dependent controls are provided to a module, which is configured to create client side markup directly attributes provided directly from the modality dependent controls. Dantzig fails to teach or suggest controls of the type recited in the independent claims. Instead, Dantzig teaches modality independent IML input files. In col. 7, Dantzig teaches that the IML files are parsed. The result of this parsing process is a plurality of “intermediate files”. These files apparently are then mapped “to appropriate modality-specific representations using suitable transformation rules.” In other words, Dantzig teaches that it is necessary to apply “transformation rules” to convert the IML files to a modality-specific representation. The Applicants respectfully submit that this teaching indicates that Dantzig does not, in fact, provide modality dependent controls of the type recited in the independent claims.

The Office Action argues that Dantzig eventually generates modality-dependent markup and that is all that is required to anticipate the independent claims. Applicants respectfully disagree. Each of the independent claims have recited features that identify instructions and or methods that create specific types of controls that are to be executed on a particular type of model to generate client side markup. Applicants agree that client side markup can be generated in a number of different ways. However, the independent claims recite specific ways to generate client side markup and Applicants submit that the features recited in claim 1 is not taught or suggested by Dantzig.

Contrary to the statements in the Office Action, the Coffman patent fails to disclose the modality dependent attributes provided directly from the controls. Rather Coffman relates to a dialog management and arbitration system and method in a multi-modal environment. While Coffman does disclose a modality dependent presentation, the modality dependency relates to the I/O interface 18 that provides an interface to I/O devices 17 such as a keyboard, mouse, touch screen, keypad, and an audio subsystem for capturing speech I/O. See Col. 5, lines 62-65. There is no disclosure that the conversion application 15 is modality dependent as claimed. Rather the CVR performs the necessary conversions based upon how the CVR is activated. Further, the Coffman patent discloses that the DMAF makes no assumptions on the number, domain, or modality of applications built against it. Col. 5, lines 51-54. Finally, the DMAF is disclosed as providing a bridge between the application and the other components of the CAP to shield application developers from knowledge of the CAF components. Col. 5, line 42-47. The cited portions prove that the Coffman patent discloses nothing more than the Dantzig patent.

As such Applicant respectfully submits that Coffman does not teach, suggest or render obvious modality dependent provided attributes directly from the controls as claimed. Therefore, claim 1 is in allowable form.

The Office Action also rejected claims 12, 23 and 52 as being obvious over the Dantzig patent in view of the Ladd patent. Applicant incorporates the arguments made with

respect to the allowability of claim 1 over the Dantzig patent as claims 12, 23 and 52 include similar claim elements.

Ladd et al. merely describes a voice browser for interactive services and methods thereof. The system illustrated and described provides a number of communication devices 201, 202, 203 and 204 that can access information. Ladd et al. do mention a markup language server 251 or a markup language server 257; however, no where do Ladd et al. describe controls of the type recited in independent claims 12, 23 and 52. At best Ladd et al. provide a general description of the markup language servers, but provide no details as to any sort of controls which would be used in the manner as recited by claims 12, 23 and 52. Accordingly, applicants respectfully request withdrawal of the rejections of claims 12, 23 and 52 as being obvious over the Dantzig patent in view of the Ladd patent.

The Office Action rejected independent claim 23 as being over the Dantzig patent in view of the Ladd patent. Applicant has amended claim 23 to further define the invention as claiming sets of values from the second set of modality dependent controls are synchronized with the first set of dependent visual controls. Applicant submits that there simply is no teaching or suggestion of a nested first set of modality dependent controls and a second set of modality dependent controls where the second set of controls uses at least one of the first set of controls. Rather, both the Dantzig patent and the Ladd patent disclose that each modality control works independent of the other. Further, since the modality dependent controls work independent of each other, there is no disclosure of the values from the second set of modality controls being synchronized with the first set of modality dependent controls. The amended claim language can be found at page 60, line 28 – page 61, line 29. As such, Applicant respectfully submits that independent claim 23 is allowable over the combination of the Dantzig patent in view of the Ladd patent.

The Office Action rejected claims 2-11, 13-22, and 24-51 as being obvious. At least due to their dependency on claims 1, 12 and 23, claims 2-11, 13-22, and 24-51, which further define the inventions claimed in claims 1, 12 and 23, respectively are also in allowable form reconsideration and allowance of claims 2-11, 13-22, and 24-51 are respectfully requested.

The foregoing remarks are intended to assist the Office in examining the application and in the course of explanation may employ shortened or more specific or variant descriptions of some of the claim language. Such descriptions are not intended to limit the scope of the claims; the actual claim language should be considered in each case. Furthermore, the remarks are not to be considered exhaustive of the facets of the invention which are rendered patentable, being only examples of certain advantageous features and differences, which applicant's attorney chooses to mention at this time. For the foregoing reasons, applicant reserves the right to submit additional evidence showing the distinction between applicant's invention to be unobvious in view of the prior art.

Furthermore, in commenting on the references and in order to facilitate a better understanding of the differences that are expressed in the claims, certain details of distinction between the same and the present invention have been mentioned, even though such differences do not appear in all of the claims. It is not intended by mentioning any such unclaimed distinctions to create any implied limitations in the claims.

In view of the foregoing, applicants respectfully request reconsideration of the application as amended. Favorable action upon all claims is solicited.

Applicant hereby requests an extension of time to respond to the Office Action. An online charge authorization for the extension of time fee and extra claim charges is enclosed.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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